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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CALIFORNIA INSURANCE GUARANTEE
ASSOCIATION et al.,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS
BOARD and MAXINE BONALES,

Respondents.

F047291

(WCAB No. BAK 122937)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of review. Evelyn Dapramont,
Administrative Law Judge.

Hanna, Brophy, MacLean, McAleer, & Jensen and Roy D. Baehr, for Petitioner.

No appearance by Respondent Workers' Compensation Appeals Board.

No appearance by Respondent Maxine Bonales.

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*Before Harris, A.P.J., Gomes, J., and Dawson, J.

The California Insurance Guarantee Association (CIGA) petitions for a writ of review asking this court to inquire into and determine the lawfulness of the decision of the Workers' Compensation Appeals Board (WCAB). (Lab. Code, § 5950; Cal. Rules of Court, rule 57.) The CIGA contends the WCAB exceeded its powers in exercising jurisdiction over a claim for vocational rehabilitation (VR) benefits after five years from the date of injury. We will deny the petition.

BACKGROUND¹

Maxine Bonales worked as a reprographics technician for the College of the Canyons on February 13, 1997, when she injured her back and spine, causing her to suffer from fibromyalgia. On June 3, 1999, the parties agreed to a stipulated award following the recommendation of Bonales's treating physician, who found Bonales unable to return to her former occupation.

Beginning January 12, 1999, Bonales accepted, and soon thereafter delayed, VR benefits. On August 17, 1999, the CIGA² filed a request with the Rehabilitation Unit of the Division of Workers' Compensation (RU) to terminate Bonales's VR benefits for failing to timely request reinstatement.

Bonales's objected and requested a dispute resolution. On September 2, 1999, the RU adjudicated the issue and found Bonales retained the right to seek reinstatement of VR benefits within five years from the date of her injury. Bonales subsequently requested reinstatement on October 20, 1999, and she received services in the form of vocational testing and counseling.

¹ As the respondents did not answer the Petition for Writ of Review and the WCAB's record is not before this court, we adopt the CIGA's representation of the relevant procedural and factual history.

² It is unclear from the Petition for Writ of Review when the CIGA accepted Bonales's case as a "covered claim" under the Guarantee Act. (See Ins. Code, §§1063 et seq.; *Denny's Inc. v. Workers' Comp. Appeals Bd.* (2003) 104 Cal.App.4th 1433, 1438-1439.) Further references to the CIGA therefore include the College of the Canyons and its former insolvent insurer.

On January 14, 2000, Bonales again requested to interrupt her VR services until she was evaluated by an agreed medical examiner on April 17, 2001. The CIGA agreed, providing Bonales with notice that she must request reinstatement within five years from the date of injury.

On May 23, 2000, Bonales filed a Petition to Reopen her WCAB claim based on new and further disability. The petition expressly included a need for vocational rehabilitation.³ Three years later, on May 30, 2003, a workers' compensation administrative law judge (WCJ) issued a revised award amending Bonales's level of permanent disability. The CIGA filed a Petition for Reconsideration, which the WCAB denied on June 25, 2003.

On August 25, 2003, more than five years from the date of Bonales's February 13, 1997, injury, Bonales requested reinstated of VR services. The CIGA objected and the RU set the issue for a formal conference. On January 20, 2004, the RU consultant found Bonales's request barred by RU Administrative Guidelines, section 8-30-01.4⁴ and Labor

³ The Petition for Writ of Review contradicts itself on this point. At page three, the CIGA states that "On May 23, 2000, applicant filed a Petition to Reopen, alleging New and Further Disability, *including a need for rehabilitation*" (Emphasis added.) On the following page, the petition presents the following question: "Does the final adjudication of the petition to reopen, *without raising the issue of rehabilitation, or otherwise requesting a reservation of jurisdiction to award further services*, bar the right to a subsequent request for further services made more than five years after the date of injury?" (Emphasis added.) Lacking a copy of the petition before us and presuming the WCAB's official duty has been regularly performed (Evid. Code, § 664), we must agree with the WCAB's finding that Bonales's timely Petition to Reopen included a request for further VR benefits.

⁴ RU Administrative Guidelines, section 8-30-01.4 provides in relevant part: "The Unit has jurisdiction to order vocational rehabilitation services when an injured worker has made an initial request for such services: (1) one year from the last finding of permanent disability by the WCAB, or one year from the WCAB approval of a Compromise and Release of other issues; or (2) five years from the date of injury where the original injury causes a need for vocational rehabilitation services, whichever occurs last. (see L.C. § 5410)"

Code, section 5410. Bonales appealed, and on October 25, 2004, the WCJ overruled the RU's determination and found the WCAB retained jurisdiction over Bonales's vocational rehabilitation. On December 24, 2004, the WCAB summarily denied the CIGA's Petition for Reconsideration by adopting the Report and Recommendation of the WCJ.

DISCUSSION

For injuries occurring before January 1, 2004, an employer was required to provide vocational rehabilitation services to a "qualified injured worker."⁵ (See §§ 139.5, 4635 et seq.; 2 Hanna, California Law of Employee Injuries and Workers' Compensation (rev. 2d ed. 2001) § 35.10.) A "qualified injured worker" meant an employee unable to return to his or her former occupation and reasonably able to obtain gainful employment after providing vocational rehabilitation services. (§ 4635, subd. (a).) Vocational rehabilitation services included "vocational and medical evaluation, counseling, job analysis, job modification assistance, retraining, including on-the-job training or training for alternate employment, formal training, academic instruction, and job placement assistance." (§ 4635, subd. (d).) Such benefits were provided to restore an injured worker to suitable gainful employment following an industrial injury. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 232.)

The CIGA contends the WCAB misapplied Labor Code section 5410 in finding it retained jurisdiction to award Bonales further VR benefits after five years from the date of her industrial injury.⁶ Section 5410 permits the reopening of a prior decision of the WCAB for "new and further disability" upon the filing of a petition of the injured employee

⁵ The Legislature has since eliminated the workers' compensation vocational rehabilitation program. (See Stats. 2003, ch. 635 (Assem. Bill No. 227); Stats. 2004, ch. 334 (Sen. Bill No. 899).) Further statutory references are to the Labor Code in effect after January 1, 1990, and before January 1, 2004.

⁶ As not raised by either the CIGA or the WCAB, we do not address VR jurisdiction under now repealed section 5405.5 regarding *initial* claims for VR benefits.

within five years of the date of injury.⁷ (*Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 941, 954.) “The application of VR statutes of limitations to undisputed facts is a question of law subject to de novo review.” (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 489.) As with other provisions of the workers' compensation laws, statutes regarding VR benefits must be construed liberally in favor of granting benefits to injured workers. (*Webb v. Workers' Comp. Appeals Bd.* (1980) 28 Cal.3d 621, 626-627.)

“To invoke the WCAB's continuing jurisdiction under section 5410, the Workers' Compensation Act (Act) requires only that an appropriate pleading be filed with the WCAB within five years from the date of injury. [Citation.] If an appropriate pleading is timely filed within the five-year period, the power of the WCAB to reopen and decide a matter extends beyond the five-year period.” (*Martino v. Workers' Comp. Appeals Bd.*, *supra*, 103 Cal.App.4th at p. 489.)

In *Youngblood v. Workers' Comp. Appeals Bd.* (1989) 216 Cal.App.3d 764, 767, a workers' compensation applicant sustained an industrial injury on October 3, 1978. The RU denied the applicant VR benefits in July 1982. (*Id.* at p. 768.) In May 1983, the applicant filed a timely Petition to Reopen for new and further disability under section 5410. (*Ibid.*) The applicant did not allege a need for VR benefits either as part of the petition, at the mandatory settlement conference, or at trial. (*Ibid.*) The WCJ granted the applicant an increased level of permanent disability and made no findings regarding VR. (*Ibid.*) On October 27, 1986, over eight years from the date of injury, the applicant requested VR

⁷ Section 5410 provides in relevant part: “Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation, *including vocational rehabilitation services*, within five years after the date of the injury upon the ground that the original injury has caused new and further disability or that the provision of vocational rehabilitation services has become feasible because the employee's medical condition has improved or because of other factors not capable of determination at the time the employer's liability for vocational rehabilitation services otherwise terminated. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period.” (Emphasis added.)

benefits, which the RU denied as untimely. (*Id.* at p. 769.) On writ review, the court of appeal held the WCAB “correctly concluded that it lacked jurisdiction to award rehabilitation benefits because applicant’s request was filed more than five years after the date of injury.” (*Id.* at p. 775-776.) The court of appeal noted, however, that had the applicant amended his petition to reopen to include a VR determination, the WCAB could have reserved jurisdiction over the issue beyond five years. (*Id.* at p. 773.)

Bonales included the issue of VR benefits in her timely Petition to Reopen for new and further disability.⁸ Although the WCAB subsequently ruled on the issue of permanent disability, it had not determined her entitlement to VR benefits. “A timely petition to reopen remains pending and is not affected by the statute of limitations where there has been no decision of any kind by the WCAB on the specific form of benefits at issue.” (*Martino v. Workers’ Comp. Appeals Bd., supra*, 103 Cal.App.4th at p. 490, citing *Bland v. Workmen’s Comp. App. Bd.* (1970) 3 Cal.3d 324, 333-334.) Having filed a timely Petition to Reopen, the WCAB appropriately retained jurisdiction over Bonales’s VR claim.

DISPOSITION

The Petition for Reconsideration, filed February 4, 2005, is denied. This opinion is final forthwith as to this court.

⁸ See footnote 3, *supra*.